HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 679 (M/S) of 2002
Shri Mohd. Hanif, son of Sarif Ahmad,
Resident of Ghat Bagarh
Vs.
1. Prescribed Authority/S.D.M. Bageshwar.
2. District Judge-Bageshwar, District Bageshwar.

Approved for reporting.

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~~Not approved for reporting~~

Decided on 24.11.2004.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 679 (MS) OF 2002.

Shri Mohd. Hanif, son of Sarif Ahmad, resident of Ghat Bagarh Tehsil & District Bageshwar. ...Petitioner.

Versus

1. Prescribed Authority/S.D.M. Bageshwar.
2. District Judge-Bageshwar, District Bageshwar.

.....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri. P.S. Adhikari, Sr. Advocate assisted by Sri B.S. Adhikari, counsel for the petitioner and Sri N.P. Shah, counsel for the respondents.

By the present writ petition, the petitioner has prayed for quashing the orders dted 29.03.2001 and 16.08.2002 passed by the respondent no. 1 and 2

Briefly stated, according to the petitioner the fact of the case are that he has purchased the area in dispute from one Sri Madan Lal Sah from his Khata No. 19, Khet No. 618 who had been recorded as Bhumidhar in possession of the land, through a registered sale deed dated 2nd December, 1991.

Petitioner has submitted that 8 Mutthi or ½ Nali land was purchased from one Sri Madan Lal Sah by the petitioner and his name was mutated on 8th June, 1992. Petitioner has

filed the copy of the Khatauni by which it will appear that his name was mutated in respect of the area in question, which was purchased by him. The entry to that effect is quoted below:-

''ना० बा० सं० ८५/९१-९२ दिनांक २९.०१.९२ के मदनलाल ने दुर्गासाह के हक से मुट्ठी मैं मो० हनीफ पुत्र शरीफ अहमद के नाम विक्रय नामांकन किया

हस्ताक्षार अस्पष्ट
०८.०६.९२''

Petitioner has submitted that while getting the possession on the basis of the sale deed dated 2nd December, 1999, the land was thorough measured by the Patwari of Talla Katura Bageshwar.

Subsequently, a notice under Section 4(1) of Public Premises and Eviction of Illegal Occupants Act, 1972 was issued by respondent no. 1 on 04.11.200 showing that the petitioner has unauthorisedly occupied the premises in respect of 2 Mutthi of public land. The notice shows as under:-

ग्राम घटबढ़ षट्टी/पटवारी क्षेत्र त० क० बागेश्वर तहसील एवं जनपद बागेश्वर क उ०प्र० सरकार की खतौनी खाता संख्या ६९ के पैमाइसी खेत नम्बरान ६१७ मध्य पर की रकबा नाली ०२ मुट्ठी भूमि पर अप्राधिकृत अध्यासन किया गया है।

आज दिनांक ४.११.२००० को हस्ताक्षिरित एवं न्यायालय की मुद्र से समुद्रित होकर निर्गत किया गया है।''

In pursuance of the aforesaid notice, the petitioner has filed his objections on 18th December, 200 denying the averments contained in the notice. Petitioner has submitted that he is constructing his house only on his Bhumidhari land, which was purchased from Sri Madan Lal Sah through registered sale deed. Sri Mohan Singh Nayal Patwari of Tall Katura has given his report on 30th November, 1991 and he did not find any encroachment on the possession of the petitioner.

Petitioner has submitted that he has not encroached on any state land and he has purchased land over plot no. 618 and Khatauni No. 19 even his own land is only 7 ½ Mutthis out of 8 mutthis and therefore, the land is less then actual measurement which has been found by Patwari during his spot inspection date 21.05.2001.

A perusal of the Inspection report dated 21st May, 2000 shows to the following effect:-

''इस मध्य अपीलान्ट मोहम्मद हनीफ के कब्जें मे लगभग १०४० वर्ग फीट आसपास है जो ८ मुट्ठी अर्थात आधा नाली से कुछ वर्ग फीट कम है। अतः रिपोर्ट मय नक्शा सेवा में प्रस्तुत है। ''

Similar report has been given on 11th January, 2001 where it has been stated that the construction of the petitioner stands at 7 and half Mutthi.

Further the Patwari was examined on oath namely Mohan Lal Nayal, who has stated as under:-

''इसमें किसी ने रिपोर्ट नही की गस्ते दौरान जॉच की। मै मौके पर ३१.१०. २००० को गया था। अतिक्रमण वाली जमीन नाप भूमि के बीच में है। मौके पर कोई अन्य उपस्थिति नही था। मैने अध्यासी को बुलाया अन्य किसी को नही बुलाया मैने नक्श/खसरा/खतौनी व चालानी रिपोर्ट वहीं पर तैयार कर दी थी। मैने ३०.११. ९९ को उक्त अध्यासी की नाप भूमि की नाप करने गया था। अदालत के आदेश पर गया था। भवन ७१/२ मुट्ठी नाप पर भवन निर्माण किया था।''

The petitioner was also examined, who has stated that, he has purchased 8 Mutthi land of Plot No. 618 and the house is constructed on 7 and half Mutthi and half Mutthi is on the side of Joga Ram and Joga Rami is owner of Plot no. 617.

The Prescribed Authority vide his order dated 29th march, 2001 has passed the order evicting the petitioner in proceedings under Section 4(1) of the Public Premises Act.

Aggrieved by the aforesaid order, the petitioner went in appeal. The appellate court has recorded a finding that the

petitioner has purchased the land of 8 Mutthi of Plot No. 618 and he is in possession of some land of plot no. 617 as well. The findings to that effect are quoted below:-

''अपीलीय प्रक्रम पर विवादित भूमि की सर्वे आख्या से यह स्पष्ट है कि खेत संख्या १६ के पैमाईश खेत सं० ६१८ मे से ८ मुट्ठी भूमि का क्रय किया है। परन्तु सर्वे आख्या मे अपीलार्थी की आधी नाली भूमि से कुछ वर्ग फिट भूमि कम है। उक्त आख्या से यह स्पष्ट नहीं किया गया कि अपीलार्थी की जो भूमि कम है वह किस खेत में अधिक है। या उसकी लगभग आधी मुट्ठी भूमि किसने दबा ली, परन्तु सर्वे आख्या से यह स्पष्ट है कि अपीलार्थी ने खाता सं० ६१८ के कब्जे के साथ साथ खाता सं० ६१६ में भी दो मुट्ठी भूमि का अतिक्रमण किया है। निश्चय ही अपीलार्थी का यह अधिकार यह स्पष्ट नही हो सकता कि किस अधिकार के आधार पर उसने भूमि सं० ६१७ में से भूमि अपने अध्यासन से प्राप्त ली एवं उस पर मकान निर्मित कर लिया।''

A perusal of the notice under Section 1(1) shows that the petitioner has encroached on plot no. 617 in respect of two Mutthi. The petitioner has made a statement that he has no concern with plot no. 617 as he is the owner of the plot no. 618 alone and he has constructed his house in the plot itself. The notice, therefore, which was issued in respect of plot no. 617 cannot be a basis for eviction in respect of Plot No. 618.

The State has failed to differentiate between the plot no. 617 and 618 from the inspection report as well as from the statement of the Patwari. However, from the record it will appear that the petitioner has constructed the house on his own land of plot no. 618 and not on 617.

Consequently, the orders dated 29.03.2001 and 16.08.2002 passed by the respondent no. 1 and 2 respectively are quashed.

The writ petition is allowed. No order as to costs.

24.11.2004 (RAJESH TANDON, J.)
P.S.R.